STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. QWEST CORPORATION AND MCI WORLDCOM COMMUNICATIONS, INC., Respondents.	DOCKET NO. FCU-02-5 (C-02-22)

ORDER DOCKETING COMPLAINT, REQUIRING ADDITIONAL INFORMATION, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued May 14, 2002)

On April 11, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to 199 IAC 6.5, asking that the Board review the proposed resolution issued in C-02-22, Mark Seed Company vs. Qwest Corporation and MCI WorldCom Communications, Inc., and to consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)(a) (2002). Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this formal complaint proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

Prior to the events leading to this complaint, Mark Seed Company (Mark Seed) received its long distance service from OneStar Long Distance, Inc. (OneStar). On April 18, 2001, Mark Seed received a call from a sales representative for MCI WorldCom Communications, Inc. (MCI), proposing that Mark Seed change its preferred interexchange carrier to MCI. Mark Seed agreed to the change, believing it would receive lower long distance rates from MCI. However, when Mark Seed reviewed its telephone bills in May and June, it found the bills were higher than expected, so on June 18, 2001, Mark Seed asked to be switched back to OneStar. Mark Seed received documentation from OneStar on June 28 and July 5, 2001, confirming the change.

However, Mark Seed's August 2001 bill from Qwest Communications, Inc. (Qwest), continued to include charges from MCI. Mark Seed contacted MCI and Qwest on multiple occasions and received a variety of responses, but the MCI charges continued to appear on Mark Seed's bill from Qwest. On October 22, 2001, Mark Seed contacted the Consumer Protection Division of the Iowa Attorney General's office; that office, in turn, contacted MCI and Qwest and received additional responses, generally indicating the problem had been identified and corrected, but each month new MCI charges appeared on Mark Seed's Qwest bill.

On January 15, 2002, Mark Seed filed a written complaint with the Board, identified as C-02-22. Board staff forwarded the complaint to MCI and Qwest and on March 1, 2002, Qwest responded that it had identified and corrected a routing error

that was incorrectly directing Mark Seed's long distance calls to MCI. Qwest apologized for the error and stated that all of the incorrect charges had been recoursed back to MCI. Qwest further stated that because of the timing of the correction, the customer's February bill would likely also include some MCI charges, which would also be recoursed back to MCI.

On February 28, 2002, after receiving responses from both of the carriers, Board staff issued the first proposed resolution in this matter. Based upon the company responses, Board staff indicated that two repair tests had been conducted by the companies and it appeared the routing error had been corrected. Board staff recognized that Qwest had recoursed all of the customer's affected long distance charges back to MCI and expressed the opinion that if the customer were re-billed for any of those calls, they should be charged only at the long-distance rates the customer agreed upon with its preferred long distance carrier.

On March 4, 2002, Mark Seed objected to the first proposed resolution, stating it had no contract with MCI for long distance service and did not feel it should be required to pay anything to any carrier for the mis-routed calls. The customer requested formal complaint proceedings and asked that fines be assessed against Qwest.

On March 6, 2002, Board staff issued a second proposed resolution, concluding that the circumstance described above amounted to an accidental unauthorized change in service, or slam. Accordingly, pursuant to 199 IAC 6.8(4),

Board staff found that Mark Seed should not be liable for any of the disputed long distance charges. Staff also indicated that it does not have the authority to assess civil penalties or other fines.

On March 18, 2002, Mark Seed filed a further response, indicating its March bill from Qwest still included charges from MCI and asking whether the problem had actually been corrected. Board staff forwarded the letter to the carriers, and on March 28, 2002, Qwest responded that after further investigation it had determined that the programming had not been corrected on all of Mark Seed's telephone lines. Qwest stated that all problems had now been corrected, but also indicated it would follow up on the account to ensure there were no more problems.

On March 29, 2002, Board staff issued a third proposed resolution, stating that all MCI charges appearing on the customer's bills should be deleted and proposing to close the complaint file if no further comments were received within 14 days.

On April 9, 2002, Mark Seed filed another letter, stating that its April bill from Qwest still included MCI charges and asking that staff keep the complaint file open for two months in order to ensure that all of the necessary corrections had been completed and no more MCI charges would appear on its telephone bills.

On April 11, 2002, Consumer Advocate filed a request for formal complaint proceedings, asking the Board to consider the propriety of imposing a civil penalty pursuant to Iowa Code § 476.103(4)"a" and to consider the factors identified in

§ 476.103(4)"b" as a possible basis for compromising a civil penalty, if one is imposed.

On May 1, 2002, Qwest filed a statement in opposition to Consumer Advocate's request. Qwest argues that “a series of unfortunate programming and network routing issues” does not constitute “slamming” as defined in the Board’s rules. Qwest states it has credited Mark Seed for all of its interexchange service charges from the October 4, 2001, bill through the April 4, 2002, bill, a total of $12,284.20. Qwest appears to believe this is an appropriate outcome in this matter. Qwest also argues that the proposed resolution, based on “Board’s staff’s involvement in this matter dat[ing] back to October 2001,” determined no further action was necessary with respect to Qwest, and no new facts have been presented that would warrant a formal proceeding against Qwest.

The Board will grant Consumer Advocate’s request for formal complaint proceedings, to be identified as Docket No. FCU-02-5. The Board will also order Qwest to file certain additional information in this docket and assign this matter to an administrative law judge for further proceedings. Based on the facts presented to date, the course of dealings between Mark Seed and Qwest represent “slamming” as that term is defined in the Board’s rules. Moreover, Qwest’s responses to the customer’s complaints appear to have been wholly inadequate, compounding an accidental slam with several months of poor customer service. These facts provide reasonable grounds for investigating this complaint, pursuant to §§ 476.3(1) and

476.103, to consider whether additional penalties are justified, as customer compensation under § 476.103(3)"c," civil penalties under § 476.103(4), or in such other form as the facts may justify.

The Board notes at least two errors in Qwest's response that should be addressed at this time. First, the facts presented to date clearly constitute a slam as defined in the Board's rules. Subrule 199 IAC 22.23(1) defines "slamming" as follows:

> *"Slamming"* means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, without the verified consent of the customer.

This definition does not require that the slammer designate itself as the new service provider, as claimed in Qwest's response. It also does not require any particular intent on the part of the slamming entity. The fact that Qwest did not benefit financially from the slam tends to support staff's proposed conclusion that this was an accidental slam, but it does not change the fact that MCI was designated as the interexchange telecommunications service provider to Mark Seed without the verified consent of Mark Seed, apparently as a result of Qwest's errors.

Second, Qwest asserts that the Board's staff has been involved in this matter since October 2001, implying that an in-depth investigation has already been completed and, therefore, an appropriate resolution has been reached. That factual assertion is incorrect. This agency's involvement in this matter dates back only to January 15, 2002, when Mark Seed filed its written complaint with the Board.

Qwest's failure to resolve this matter prior to that date is the result of Qwest's own actions, not involving the Board or its staff.

In order to facilitate a timely resolution of this docket, the Board will direct Qwest to file copies of all of its records from June 18, 2001, to the date of this order relating to contacts between Qwest and Mark Seed or between Qwest and MCI relating to the Mark Seed account, along with a narrative description of each contact and the actions Qwest took in response to each contact. Qwest shall also explain why Mark Seed's account has only been credited back to the bill of October 4, 2001, when the customer's request for a change in preferred interexchange carrier was made on June 18, 2001.

IT IS THEREFORE ORDERED:

1. The "Request For Formal Proceeding" filed on April 11, 2002, by the Consumer Advocate Division of the Department of Justice is granted, pursuant to Iowa Code §§ 476.3 and 476.104 (2001). The informal complaint proceedings identified as C-02-22 are docketed for formal proceedings identified as Docket No. FCU-02-5.

2. Within 20 days of the date of this order, Qwest shall file copies of all of its records from June 18, 2001, to the date of this order relating to contacts between Qwest and Mark Seed or between Qwest and MCI relating to the Mark Seed account, along with a narrative description of each contact and the actions Qwest took in response to each contact. Qwest shall also explain why Mark Seed's

account has only been credited back to the bill of October 4, 2001, when the customer's request for a change in preferred interexchange carrier was made on June 18, 2001.

3. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), this matter is assigned to an Administrative Law Judge for such further proceedings as may be appropriate.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 14th day of May, 2002.